No. 80-710

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Supreme Court of the United States

OCTOBER TERM, 1980

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO, *et al.*,
Petitioners,

v.

LOCAL 334, UNITED ASSOCIATION ETC., *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF FOR PETITIONERS

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QUESTION PRESENTED

Does Section 301 of the Labor Management Relations Act of 1947 grant jurisdiction to the federal district courts over a suit by a local union against the national union with which it is affiliated, alleging that the latter violated its national Constitution by consolidating local unions which represent employees in collective bargaining with employers and which operate employee referral systems?*

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* In addition to the United Association and Local 334, the other parties to the proceedings below were United Association Locals 49, 523, 124, 84, 14 and 274.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION	2
STATUTE INVOLVED	2
STATEMENT OF THE CASE	2
A. The Circumstances of the Controversy Between the Parties	2
B. The Proceedings Below	4
1. The Complaint and Amended Complaint	4
2. Removal to the District Court and the Proceedings Therein	7
3. The Proceedings in the Court of Appeals	8
SUMMARY OF ARGUMENT	10
ARGUMENT	12
I. THE DISTRICT COURT HAD JURISDICTION UNDER SECTION 301(a) OF THE LMRA BECAUSE THIS IS A SUIT FOR VIOLATION OF A CONTRACT BETWEEN LABOR ORGANIZATIONS REPRESENTING EMPLOYEES IN AN INDUSTRY AFFECTING INTERSTATE COMMERCE	12
A. The United Association's Constitution is a "Contract" between Labor Organizations Representing Employees in an Industry Affecting Commerce	12

PREVIOUS PAGE WAS BLANK

TABLE OF CONTENTS—Continued

Page

B. The Policy Arguments Against Reading Section 301(a) As Written Are Unsound In Principle and On Their Face 22

II. EVEN IF A SIGNIFICANT IMPACT ON LABOR-MANAGEMENT RELATIONS IS NECESSARY TO SUSTAIN JURISDICTION IT IS PRESENT ON THIS RECORD 25

CONCLUSION 30

TABLE OF AUTHORITIES

CASES: Page

Alexander v. *International Union of Operating Engineers*, 624 F.2d 1235 (5th Cir. 1980) 20
Alexion v. *Hollingsworth*, 289 N.Y. 91, 43 N.E.2d 825 (1942) 18
Andrus v. *Allard*, 444 U.S. 51 (1979) 13
Barbrick v. *Huddell*, 245 Mass. 428, 139 N.W. 629 (1923) 18
Blue Chip Stamps v. *Manor Drug Stores*, 421 U.S. 723 (1975) 13
Brotherhood of Railway Trainmen v. *William*, 211 Ky. 638, 277 S.W. 500 (1925) 18
Burns v. *Alcala*, 420 U.S. 575 (1975) 15
Carbon Fuel Co. v. *Mine Workers*, 444 U.S. 212 (1979) 10, 15, 16, 17, 25
Carpenters v. *Local 14*, 178 S.W.2d 558 (Tex. Civ. App. 1944) 18
Cohens v. *Virginia*, 6 Wheat. (19 U.S.) 264 22
Consumer Product Safety Comm'n v. *GTE Sylvania*, 447 U.S. 102 (1980) 12
Coronado Co. v. *U.M. Workers*, 268 U.S. 295 (1925) 10, 15, 17
Dowd Box Co. v. *Courtney*, 368 U.S. 502 (1962) .. 15, 16, 25
Grand Lodge, I.A.M. v. *Reba*, 97 Conn. 235, 116 Atl. 235 (1922) 18
Greenwood v. *United States*, 350 U.S. 366 (1956) .. 21
Harris v. *Backman*, 160 Or. 520, 86 P.2d 456 (1939) 18
Harris v. *Geier*, 112 N.J. Eq. 99, 164 Atl. 50 (Ch. 1932) 18
Harrison v. *PPG Industries, Inc.*, 446 U.S. 578 (1980) 10, 21, 22
International Association of Machinists v. *Gonzales*, 356 U.S. 617 (1958) 18, 21
John Wiley & Sons v. *Livingston*, 376 U.S. 543 (1964) 28
Local 76 v. *Carpenters*, 143 La. 902, 79 So. 532 (1918) 18

TABLE OF AUTHORITIES—Continued

Page

Local Union No. 657, United Brotherhood of Carpenters and Joiners v. *Sidell*, 552 F.2d 1250 (7th Cir. 1974), *cert. denied*, 434 U.S. 862 (1977).. 19, 20, 28, 29

Local Union 1219, United Brotherhood of Carpenters and Joiners v. *United Brotherhood of Carpenters and Joiners*, 493 F.2d 93 (1st Cir. 1974) 19, 28

Lumber and Sawmill Workers Union No. 2623 v. *International Wood Workers Local 49*, 197 Wash. 491, 85 P.2d 1099 (1938) 18

Minnesota Council of State Employees v. *American Federation of State Employees*, 220 Minn. 179, 19 N.W.2d 414 (1945) 18

N.L.R.B. v. *Iron Workers*, 434 U.S. 335 (1979).... 28

National Association of Letter Carriers v. *Sombrotto*, 449 F.2d 915 (2d Cir. 1971) 14, 18, 23

1199 DC, National Union of Hospital and Health Care Employees, AFL-CIO, et. al. v. *National Union of Hospital and Health Care Employees*, 533 F.2d 1205 (D.C. Cir. 1976) 19, 20

O'Neill v. *United Association*, 348 Pa. 532, 36 A.2d 325 (1944) 18

Oneida Indian Nation v. *County of Oneida*, 414 U.S. 661 (1974) 26

Parks v. *International Brotherhood of Electrical Workers*, 314 F.2d 886 (4th Cir. 1963), *cert. denied*, 372 U.S. 976 (1963) 14, 18, 23

Perrin v. *United States*, 447 U.S. 37 (1979) 15

Reiter v. *Sonotone Corp.*, 442 U.S. 330 (1979) 13

Retail Clerks v. *Lion Dry Goods*, 369 U.S. 17 (1962) 15, 17, 23

Rubin v. *United States*, 49 U.S.L.W. 4103 (Jan. 21, 1981) 13

Scott v. *Donahue*, 93 Cal. App. 126, 269 P. 455 (1928) 18

Smith v. *United Mine Workers of America*, 493 F.2d 1241 (10th Cir. 1974) 20

TABLE OF AUTHORITIES—Continued

Page

Southeastern Community College v. *Davis*, 442 U.S. 397 (1979) 13, 15
Steadman v. *SEC*, 49 U.S.L.W. 4176 (Feb. 25, 1981) 13
Stelling v. *International Brotherhood of Electrical Workers*, 587 F.2d 1379 (9th Cir. 1978), *cert. denied*, 442 U.S. 944 (1979) 20
TVA v. *Hill*, 437 U.S. 153 (1978) 15
Teamsters Local v. *Labor Board*, 365 U.S. 667 27
Textile Workers v. *Lincoln Mills*, 353 U.S. 448 (1957) 13, 18, 23
Textile Workers Local 204 v. *Federal Labor Union 21500*, 240 Ala. 239, 198 So. 606 (1940) 15
Trail v. *International Brotherhood of Teamsters, Etc.*, 542 F.2d 961 (6th Cir. 1976) 18
United Mine Workers v. *Coronado Co.*, 259 U.S. 344 (1922) 15

STATUTES:

Judicial Code:

28 U.S.C. § 1254(1) 2
28 U.S.C. § 1446 7

Labor Management Relations Act of 1947, 61 Stat. 136 *et seq.*, 29 U.S.C. § 41 *et seq.*

§ 2(7) 13
§ 8(a) 25
§ 8(b) 24, 25
§ 8(d) 25
§ 8(f) 27
§ 10(c) 12
§ 301(a) ..... *passim*
§ 301(b) 17, 22
§ 301(e) 10, 17, 22

MISCELLANEOUS:

H.R. Rep. No. 741, 86th Cong., 1st Sess. (1959) 28
Sen. Rep. No. 187, 86th Cong., 1st Sess. (1959) 28

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BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 628 F.2d 812. It is reproduced at pp. 1a to 19a of the Petition for Certiorari (hereafter referred to as "Pet.").

The opinion of the District Court was in the form of a Letter Opinion dated August 17, 1979 and is unreported. It is reproduced at Pet. pp. 20a to 28a.

JURISDICTION

The judgment (Pet. pp. 29a-30a) of the Court of Appeals was entered on August 4, 1980. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

Section 301(a) of the Labor-Management Relations Act of 1947 (hereafter "LMRA" or "the Act"), 61 Stat. 136 *et seq.*, 29 U.S.C. § 185(a), provides as follows:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in the Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

A. The Circumstances of the Controversy Between the Parties

Petitioner United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (the "United Association" or "U.A.") is a labor organization representing employees engaged in interstate commerce, primarily in the plumbing and pipefitting construction industry. At the present time, there are approximately 530 local unions affiliated with and chartered by the United Association. The terms of the relationship between the United Association and each of its local unions, including their respective authorities, are established and governed by the United Association's Constitution, a document adopted and amended by action of the elected local union dele-

gates to the United Association's regular conventions, held every five years (J.A. 24, 26).[1]

Prior to 1977, twenty-seven local unions affiliated with the United Association were located in the State of New Jersey, including Respondent Local 334 of Morristown. Each local negotiated and administered its own collective bargaining agreements with industry employers. (See Affidavit of Martin J. Ward dated September 9, 1977, para. 16, J.A. 81-82). Believing that the continued existence of so many local unions in the state was unjustified and harmful to the interests of the membership, the United Association had urged the locals to agree upon voluntary consolidation plans. When no satisfactory plans could be agreed upon, the United Association International Representative assigned to the State of New Jersey proposed his own plan for consolidation to the United Association's General President. Insofar as is relevant to this case, the plan called for the consolidation of nine local unions, including Respondent Local 334, into two surviving locals, one representing plumbers (Local 14) and the other representing pipefitters (Local 274). Each local union that would be affected by this proposed plan, including Local 334, was given the opportunity to present its position on the plan at a hearing conducted by a duly appointed union hearing officer on May 10, 1977.[2] Thereafter, the Hearing Officer submitted his report and recommendations to the United Association's General President (Exhibit B to the Complaint, J.A. 27). Concluding that the proposed plan of consolidation would increase employment opportunities for members, protect fringe benefit

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[1] "J.A." refers to the Joint Appendix in this Court.

[2] The hearing was held even though it was not required by the United Association Constitution. Despite their common surname, the Hearing Officer who conducted the hearing, Philip S. Coyne, is no relation of the International Representative who proposed the plan of consolidation, Francis J. Coyne.

rights of members, improve operating efficiency and assist in combating non-union conditions, the Hearing Officer recommended that the proposed plan be adopted (J.A. 36-38).

The Hearing Officer's recommendations were adopted by the United Association's General President, Martin J. Ward, who, on August 4, 1977, issued an Order of Consolidation, effective August 15, which directed the nine northern New Jersey locals, including Respondent Local 334, to consolidate in accordance with that plan (Exhibit C to the complaint, J.A. 41). The Order was issued pursuant to Section 86 of the Constitution, which vests the United Association with the power to order local unions to consolidate in "one or more" locals when there is a superfluous number of locals in any locality and when, in the judgment of the United Association's General President, consolidation would be in the "best interest of the United Association, locally or at large" (J.A. 25). As required by Section 86, the Order of Consolidation was duly approved by the United Association's General Executive Board (J.A. 85-86).

B. The Proceedings Below

1. The Complaint and Amended Complaint

On August 22, 1977, Local 334 filed an action against the United Association in the Superior Court of New Jersey, Chancery Division, Morris County, seeking to enjoin enforcement of the Order of Consolidation. The complaint alleged that the "relationship as between plaintiff and defendant is governed by a constitution" (i.e., the United Association Constitution) (complaint, para. 3, J.A. 19); and that in directing the consolidation of Local 334's plumber members into one local (Local 14) and its pipefitter members into another local (Local 274),

the United Association had violated its Constitution (*id.*, para. 11, J.A. 21). The relief sought in the complaint was an order enjoining implementation of the consolidation until such time as Local 334 had been permitted an appeal hearing before the United Association's General Executive Board (complaint, para. 14, J.A. 21).

Shortly after filing its original complaint, Local 334 filed an amended complaint, which sought not merely to enjoin further implementation of the Order of Consolidation, but to set aside the Order, as well. Like the original complaint, the amended complaint recited that the "relationship (rights and duties) between Local 334 and the [United Association]" was governed by the Constitution, and that the Order of Consolidation violated the Constitution (amended complaint, para. 3, 23, J.A. 55, 59). The amended complaint further alleged that Local 334 had "contractual relations with the Mechanical Contractors Association and numerous independent piping and plumbing firms doing business on [sic] the Morris County area . . ." (*id.*, para. 9, J.A. 56) and that it "operate[d] a hiring hall whereby employers in need of journeymen and apprentices will contact plaintiff which in turn will refer such employees to work" (*id.*, para. 10, J.A. 56). Such referrals were made "from a unified referral list, regardless of whether the job requires a plumber or pipefitter, and regardless of the membership designation of each such member" (*id.*, para. 11, J.A. 56). The effects upon the Local's contractual relations with employers and upon its referral system allegedly resulting from the United Association's action in ordering the consolidation were described at paragraphs 26-28 of the amended complaint:

> 26. At the present time plaintiffs have the exclusive contractual jurisdiction for all plumbing, pipefitting, metal trades and refrigeration work in Morris

County, New Jersey. As such, plaintiff refers out its membership without distinction as to whether they bear a plumber membership card or a pipefitter membership card.

27. The present Order of Consolidation, unless stayed pending this litigation will result in deprivation of work opportunities for each member of plaintiff in that such members will thereafter be required to work under separate local unions which are divided along craft lines and therefore under separate referral lists as either a plumber or a pipefitter with no opportunity to interchange as is presently the case.

28. It is impossible to calculate the financial loss, therefore, to each member of plaintiff, since job referrals under the Order of Consolidation would be shared with members of two other local unions consolidated, as well as along craft lines. Moreover, each member of plaintiff will have to compete in the territory of Morris County with a large group of journeymen and will lose the advantage of their present positions on the out of work list of plaintiff. Therefore, there will be immediate and irreparable injury to the property rights of the members of plaintiff unless defendant is restrained and enjoined from disbanding Local 334 and enforcing the Order of Consolidation. Plaintiff itself will be required to surrender its assets to be divided between two local unions. Since a great portion of these assets consist of realty, a sale of that realty so as to conform with the division of assets will result in irreparable injury to plaintiff itself unless defendant is restrained and enjoined from enforcing the Order of Consolidation.[3] (J.A. 59-60).

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[3] In addition to alleging that the consolidation was "illegal" under the Constitution, the amended complaint alleged in separate counts that, in issuing the Order of Consolidation, the United

2. *Removal to the District Court and the Proceedings Therein*

Asserting that federal jurisdiction existed under Section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), the United Association timely removed the case, pursuant to 28 U.S.C. § 1446, to the United States District Court for the District of New Jersey. (J.A. 52). Later, Local 334 filed a motion to remand the case to state court, which the District Court denied in an order filed October 20, 1977 (J.A. 98). The order denying remand also permitted several of the other locals involved in the consolidation to intervene, which they did, some supporting the consolidation and others opposing it.[4]

Immediately after the case had been removed, Local 334 succeeded in obtaining an *ex parte* temporary restraining order from the District Court, which enjoined the Order of Consolidation insofar as it affected Local 334. Among the specific acts which the Order prohibited the United Association from committing was "interfering with the contractual relations of Plaintiff with employers" (J.A. 67). However, after a hearing, the Local's

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Association's General President had abused his discretion and had failed to set forth adequate reasons for his action. The amended complaint also renewed the same claim made in the original complaint, namely, that the Local was entitled to another hearing before the General Executive Board. See J.A. 61-65.

[4] Locals 49, 84, 124 and 523 intervened on the side of Local 334 and Locals 14 and 274 intervened on the side of the United Association. Locals 14 and 274 are petitioners here. However, none of the Locals which intervened in the District Court on the side of Local 334 joined in the appeal of the District Court's decision to the Court of Appeals; thus, although identified in the petition for certiorari as respondents, those locals (Locals 49, 84, 124 and 523) are no longer parties.

request for a preliminary injunction was denied and the restraining order was subsequently dissolved.

In late 1978, after completion of discovery, the United Association and Local 334 filed cross-motions for summary judgment. In a Letter Opinion dated August 17, 1979 the District Court issued a decision in favor of the United Association (Pet. 20a). It ruled first that the Local had failed to exhaust its internal union remedies within the United Association. It ruled in the alternative that the United Association was entitled to summary judgment on the merits. After reviewing the relevant provisions of the Constitution and the history of their adoption and amendment, the District Court concluded that there was "ample basis for the U[nited] A[ssociation]'s interpretation of the Constitution as well as the application of that interpretation in the Order of Consolidation of August 4, 1977" (Pet. 28a).

3. *The Proceedings in the Court of Appeals*

The Local appealed the District Court's decision. Nowhere in the main brief it filed with the Court of Appeals for the Third Circuit or in its Reply to the United Association's brief did the Local contend that the District Court lacked subject matter jurisdiction under Section 301(a). However, the Court of Appeals raised this issue *sua sponte* and the parties were requested to submit supplemental briefs on the issue prior to oral argument, and further supplemental briefs after argument.

On August 4, 1980, the Court of Appeals issued its decision, which held that the District Court lacked subject matter jurisdiction over the controversy. The Court rejected the position advanced by the United Association that there is federal jurisdiction under Section 301(a) over any action between two labor organizations in which a violation of a union constitution is alleged (Pet. 18a).

The Court stated the test for jurisdiction in such actions to be whether the pleadings present allegations of actions which have a "significant impact on labor-management relations or industrial peace" (Pet. 18a). Determining that the standard which it thus formulated was not satisfied by the allegations of the pleadings in this case, the Court held that jurisdiction was lacking (Pet. 18a). Accordingly, the Court of Appeals vacated the judgment of the District Court and remanded to the District Court with instructions to remand the case to the state court from which it had been removed (Pet. 19a). The Court expressly reserved decision on the merits of the case (Pet. 18a, n. 20).

The United Association's petition for certiorari was filed on October 31, 1980.[5] On January 26, 1981, this Court granted the writ of certiorari.

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[5] On August 20, 1980, the Court of Appeals granted a stay of its mandate until November 2, 1980, to permit the United Association to file a petition for writ of certiorari. Apparently unaware that the Court of Appeals had already stayed its mandate, the District Court, on August 22, 1980, issued an order remanding the action to the state court. The District Court's remand order was issued in error and no effort has been made by any party to reinstate proceedings in the state court.

SUMMARY OF ARGUMENT

Section 301(a) of the Labor Management Relations Act of 1947 provides federal jurisdiction over "suits for violation of contracts between * * * labor organizations [representing employees in an industry affecting commerce]." On its face, this language constitutes a clear predicate for jurisdiction over the present case, brought against a national union by one of its affiliated locals, alleging that the national violated its constitution when it issued an order directing the consolidation of several local unions.

Of the ten Courts of Appeals which have considered the present jurisdictional issue only one, the Tenth Circuit, has held that a national union cannot be a "contract" under § 301(a). This view is plainly unsound. At the time that § 301(a) was enacted union constitutions had for many years been recognized to be contracts by federal law (*Coronado Co.* v. *U. M. Workers*, 268 U.S. 295, 304) and (apparently without exception) by state law as well. This general understanding was undoubtedly shared by the conference committee which inserted the "between such labor organizations" language into § 301(a), and which was conscious of the *Coronado* case, whose agency principle it codified in § 301(e). See *Carbon Fuel Co.* v. *Mine Workers*, 444 U.S. 212, 217.

Restricting the scope of the statutory language which Congress enacted on "policy" grounds cannot be justified.. See *Harrison* v. *PPG Industries, Inc.*, 446 U.S. 578. Moreover, the belief that such a restriction is necessary to avoid materially expanding the business of the federal courts has not been borne out by the experience of those Circuits where no restriction on jurisdiction has been recognized. Nor may such a restriction be justified on fear of interference with internal union affairs. Judicial enforcement of union constitutions in the federal courts is entirely different from governmental imposition of sub-

stantive rules and regulations. Thus, Congress created numerous substantive rules for labor-management relations in §§ 8(a) and (b), but left contract enforcement to the courts in § 301(a).

But if the existence of jurisdiction under § 301(a) does depend on whether a controversy has a significant impact on labor-management relations, as the Court below ruled, that court nevertheless erred in refusing to assert federal jurisdiction in this case. The pleadings in the case alleged that the national union's action affected the existing system of referral of men to employment and the identity of the union representing employees in collective bargaining with employers, two matters which lie at the very core of "labor-management relations."

ARGUMENT

I. THE DISTRICT COURT HAD JURISDICTION UNDER SECTION 301(a) OF THE LMRA BECAUSE THIS IS A SUIT FOR VIOLATION OF A CONTRACT BETWEEN LABOR ORGANIZATIONS REPRESENTING EMPLOYEES IN AN INDUSTRY AFFECTING INTERSTATE COMMERCE.

A. The United Association's Constitution is a "Contract" Between Labor Organizations Representing Employees in an Industry Affecting Commerce.

Our primary position is that the District Court had jurisdiction over this action because Congress expressly granted the federal courts jurisdiction over suits between a national labor organization and an affiliated local labor organization for violation of the national's Constitution.[6]

(1) In our analysis "[w]e begin with the familiar canon of statutory construction that the starting point for interpreting a statute is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." *Consumer Product Safety Comm'n* v. *GTE Sylvania*, 447 U.S. 102, 108.[7]

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[6] Throughout this brief the terms "national labor organization" and "international labor organization" will be used interchangeably. Cf. § 10(c) of the Act, 29 U.S.C. § 160(c). The United Association, in common with many other labor organizations, has affiliates in Canada as well as in the United States, and is for that reason generally referred to as an "international labor organization."

[7] The Court below expressly declined to consider whether the language of the jurisdictional statute covers this suit. See Pet. 11a, n. 13, quoted at p. 20, *infra*. It therefore seems necessary to point out that the Court of Appeals' methodology was totally inconsistent with the teachings of this Court. We confine ourselves to quoting some of the Court's most recent unanimous opinions which enunciate the same principle as the *GTE Sylvania* case quoted in the text:

[Footnote continued on page 13]

The statutory language which controls the issue in this case is that of § 301(a) of the Labor Management Relations Act of 1947:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in the Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.[8]

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[7] [Continued]

"The search for Congressional intent begins with the language of the statute." *Steadman* v. *SEC*, 49 U.S.L.Wk. 4176 (Feb. 25, 1981).

"We begin by looking to the language of the Act." *Rubin* v. *United States*, 49 U.S.L.Wk. 4103, 4104 (Jan. 21, 1981).

"Our point of departure in statutory analysis is the language of the enactment. See *Southeastern Community College* v. *Davis*, 442 U.S. 397, 405 (1979). 'Though we may not end with the words in construing a disputed statute, one certainly begins there.' F. Frankfurter, Some Reflections on the Reading of Statutes 16 (1947)." *Andrus* v. *Allard*, 444 U.S. 51 at 56.

"As is true in every case involving the construction of a statute, our starting point must be the language employed by Congress." *Reiter* v. *Sonotone Corp.*, 442 U.S. 330 at 337.

"It is elementary that '[t]he starting point in every case involving construction of a statute is the language itself.' *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U.S. 723, 756 (1975) (Powell, J., concurring)".

[8] The major qualification suggested by this language is that both labor organizations must "represent employees in an industry commerce as defined in the Act" (see § 301(a)). Likewise, only such organizations may, under the terms of § 301(a) sue and be sued by employers. Since the term "affecting commerce" is very broadly defined in § 2(7) of the Act, that requirement has only minimal practical significance. However the "affecting commerce" phrase obviously provides the indispensable nexus between § 301 and Congress' commerce power, under whose aegis the entire statute and § 301(a) in particular, were enacted. See, *e.g.*, *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, 457. The "affecting commerce" requirement applies also to suits between employers and labor organizations under § 301(a).

We are here particularly concerned with that portion of § 301(a) which grants jurisdiction over "suits for violation of contracts * * * between any such lagor organizations" (*i.e.*, "labor organizations representing employees in an industry affecting commerce * * *").

In the first appellate case to decide the present question, *F rks* v. *International Brotherhood of Electrical Wkrs.*, 314 F.2d 886 (C.A. 4), *cert. denied*, 372 U.S. 976, Chief Judge Sobeloff wrote:

> A local union is a "labor organization" within the definition of § 2(5) of the NLRA, 29 U.S.C.A. § 152(5). In addition, "contract" as used in section 301(a) should be taken to include union constitutions. The Supreme Court itself has recognized that under state law this is the generally accepted characterization of union constitutions. [314 F.2d at 917, footnote omitted.]

So, too, in *National Association of Letter Carriers* v. *Sombrotto*, 449 F.2d 915 (C.A. 2), Judge Friendly wrote:

> Section 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. § 185(a), provides federal jurisdiction to entertain "suits for violation of contracts between * * * any such labor organizations [representing employees in an industry affecting commerce]." On its face, this language constituted a clear predicate for jurisdiction at the time the complaint was brought to enforce the relevant provisions of the NALC Constitution. * * * Section 1208(b) of the 1970 Postal Reorganization Act, 84 Stat. 719, 39 U.S.C. § 1208(b), which for purposes here relevant came into effect on July 1, 1971, tracks the language of § 301 of the Labor Management Relations Act, making explicit that such jurisdiction will extend to suits for violations of contracts between labor organizations representing employees of the United States Postal Service. [449 F.2d at 918; case citations omitted.]

This straightforward reading of § 301(a)'s plain language is entirely sound, as we now show.

(2) While the history of what became § 301(a) is extensive, and has been canvassed in several of this Court's opinions,[9] the history of the clause "or between any such labor organizations" is quite sparse, because as the Court observed in *Retail Clerks* v. *Lion Dry Goods*, 369 U.S. 17, 26, "The provision for suits between labor organizations was inserted in Conference." [10] The Conference Report provides no explanation of this action.

Against this background, the approach most recently restated in *Perrin* v. *United States*, 447 U.S. 37, 42, is very much to the point:

> We begin with the language of the Travel Act itself. *Southeastern Community College* v. *Davis*, 442 U.S. 397, 405 (1979); *TVA* v. *Hill*, 437 U.S. 153, 173 (1978). A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning. *Burns* v. *Alcala*, 420 U.S. 575, 580-581 (1975). *Therefore, we look to the ordinary meaning of the term "bribery" at the time Congress enacted the statute in 1961.* (Emphasis added.)

And at the time § 301(a) was enacted federal law *did* treat national Constitutions as contracts.

In *Coronado Co.* v. *U. M. Workers*, 268 U.S. 295 (*Coronado II*), the Court, referring to *United Mine*

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[9] See, *e.g.*, *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, 452-456; *Dowd Box Co.* v. *Courtney*, 368 U.S. 502, 509-513; *Retail Clerks* v. *Lion Dry Goods*, 369 U.S. 17, 26, 27-28, n. 12; *Carbon Fuel Co.* v. *Mine Workers*, 444 U.S. 212, 216-217.

[10] The Court treated the addition of the clause as strong evidence militating against a narrow construction of "contracts" when it was sought to limit that term "to collective bargaining agreements"; the Court observed that "a federal forum was [thereby] provided for actions on other labor contracts besides collective bargaining contracts." *Id.*

Workers v. *Coronado Co.*, 295 U.S. 344 (*Coronado I*) declared:

> In our previous opinion we held that a trades-union, organized as effectively as this United Mine Workers' organization was, might be held liable, and all its funds raised for the purpose of strikes might be levied upon to pay damages suffered through illegal methods in carrying them on; but certainly it must be clearly shown in order to impose such a liability on an association of 450,000 men that what was done was done by their agents in accordance with their fundamental agreement of association. [268 U.S. at 304.]

The "fundamental agreement of association" referred to was, of course, the International Constitution of the United Mine Workers.

It can be asserted with considerable confidence that the Conference which adopted § 301(a), and added thereto the "between any such labor organizations" clause (see p. 15, *supra*) was fully aware of the *Coronado* case, and that it understood that *Coronado* treated a national Constitution as a contract. Two major purposes and consequences of the enactment of § 301 were to codify and make universal the rules which had been laid down as federal law in the *Coronado* cases that labor organizations may sue and be sued as entities, and that their liability is to be determined according to the common law of agency. See *Carbon Fuel Co.* v. *Mine Workers*, 444 U.S. 212, 217. Indeed, a "principal motive behind the creation of federal jurisdiction in this field was the belief that the courts of many States could provide only imperfect relief because of rules of local law which made suits against labor organizations difficult or impossible, by reason of their status as unincorporated associations". *Dowd Box Co.* v. *Courtney*, 368 U.S. 502, 510.

As the Court observed in *Carbon Fuel Co.*:

> * * * to effectuate § 301(a), the Taft-Hartley Act provided in § 301(b) that a union "shall be bound by the acts of its agents," and in § 301(e) provided that the common law of agency shall govern "in determining whether any person is acting as an 'agent' of another person."
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> * * * *
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> Congress' reason for adopting the common-law agency test, and applying to unions the common-law doctrine of *respondeat superior*, follows the lead of Mr. Chief Justice Taft in *Coronado Coal Co.* v. *Mine Workers*, 268 U.S. 295, 304 (1925), that to find the union liable "it must be clearly shown . . . that what was done was done by their agents in accordance with their fundamental agreement of association." [444 U.S. at 216-217.][11]

In short, if the Conference Committee, and ultimately the Congress which enacted the Conference Report, based its understanding of the word "contracts" on federal law, then that term clearly encompasses the Constitutions of national unions.

If, on the other hand, the Conference's understanding was based not on federal law, but on a more generalized perception of the legal nature of such Constitutions, the result would be the same. For, as this Court recognized

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[11] Of course, the context of the Court's discussion in *Carbon Fuel* was the scope of union liability for breach of a collective bargaining agreement with an employer; the enforceability of such agreements was the primary objective of § 301. But as *Carbon Fuel* itself demonstrates, in achieving that objective Congress did not simply enact § 301(a) to make such agreements enforceable in federal courts, but provided, *inter alia*, for the juridicial status, and scope of liability of labor organizations. Moreover, Congress did not confine § 301 to collective bargaining agreements, but used the broader term "contracts" (see *Retail Clerks* v. *Lion Dry Goods*, 369 U.S. 17) and added the clause concerning suits between labor organizations, the meaning of which is at issue in this case.

in *Machinists* v. *Gonzales*, 356 U.S. 617, 618-619 national Constitutions have been considered to be "contracts" by the law of most, and perhaps all states which considered the question. Wet set forth in the margin a list of state cases which had so held as of 1947. The list is far from exhaustive, and our research has uncovered none holding that a national Constitution is not a contract.[12]

The conclusion is inescapable that when Congress enacted § 301(a) which provides that "suits for violation of contracts * * * between any such labor organizations may be brought in any district court of the United States * * *" the legislature granted the federal courts jurisdiction over suits for violation of the national Constitution between a national union and its local unions.

(3) This conclusion was followed without qualification not only by the Fourth and Second Circuits in *Parks* and *Sombrotto*, but also by the Sixth Circuit in *Trail* v. *International Broth. of Teamsters, Etc.*, 542 F.2d 961 (C.A. 6), which stated succinctly:

> The language of § 301(a) authorizes in its terms "Suits for violation of contracts . . . between any

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[12] *Textile Workers Local 204* v. *Federal Labor Union 21500*, 240 Ala. 239, 198 So. 606 (1940); *Scott* v. *Donahue*, 93 Cal. App. 126, 269 Pac. 455 (1928); *Grand Lodge, I.A.M.* v. *Reba*, 97 Conn. 235, 116 Atl. 235 (1922); *Brotherhood of Railway Trainmen* v. *William*, 211 Ky. 638, 277 S.W. 500 (1925); *Local 76* v. *Carpenters*, 143 La. 902, 79 So. 532 (1918); *Barbrick* v. *Huddell*, 245 Mass. 428, 139 N.E. 629 (1923); *Minnesota Council of State Employees* v. *American Federation of State Employees*, 220 Minn. 179, 19 N.W.2d 414 (1945); *Harris* v. *Geier*, 112 N.J. Eq. 99, 164 Atl. 50 (Ch. 1932); *Alexion* v. *Hollingsworth*, 289 N.Y. 91, 43 N.E. 2d 825, 828 (1942); *Harris* v. *Backman*, 160 Or. 520, 86 P. 2d 456 (1939); *O'Neill* v. *United Association*, 348 Pa. 532, 36 A.2d 325 (1944); *Carpenters* v. *Local 14*, 178 S.W.2d 558 (Tex. Civ. App. 1944); *Lumber and Sawmill Workers Union No. 2623* v. *International Wood Workers Local 49*, 197 Wash. 491, 85 P. 2d 1099 (1938).

> such labor organizations." We see no reason why such a contract might not be expressed in a union constitution, a local union charter, or a combination of both. [*Id.* at 968.]

This observation was quoted with approval by the Seventh Circuit in *Local Union No. 657, Etc.* v. *Sidell*, 552 F.2d 1250, 1253 (C.A. 7), *cert. denied* 434 U.S. 962 (hereafter "*Sidell*").

But the *Sidell* court, in asserting jurisdiction over the case before it, suggested that § 301(a) might apply only where the dispute "may effect [sic] labor-management relations". *Id.* at 1256. So, too, the First Circuit while also recognizing that the language of § 301(a) is unqualified has indicated that there may be no jurisdiction over "purely internal union affairs". *Local No. 1219, Etc.* v. *United Bro. of Carpenters & Join.*, 493 F.2d 93, 95-96 (C.A. 1) (hereafter "*Local 1219*"). But the salient point for present purposes is that each of these five Courts of Appeals has recognized that there is federal jurisdiction over suits between a national union and its affiliate for violation of the national Constitution under "the literal meaning of the statute". (*Id.* at 96.)

It is also significant that four Courts of Appeals which have declined federal jurisdiction over the particular suits before them have done so without even partial reliance on the view that the language of § 301(a) suggests any limitation on federal court jurisdiction over cases between two unions based on a national Constitution.[13] See, in addition to the opinion below, especially at Pet. 14a-15a, 18a, *1199 DC, National Union of Hospital and Health Care Employees, AFL-CIO, et al.* v. *National Union of*

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[13] Indeed these courts have adopted standards which contemplate that jurisdiction will lie over some suits between national and local unions (see Part II, *infra*) and thus that they are within the statutory language of § 301(a).

Hospital and Health Care Employees, 533 F.2d 1205 (C.A. D.C.) (hereafter "*1199 DC*"); *Stelling* v. *International Brotherhood of Electrical Workers*, 587 F.2d 1379 (C.A. 9), *cert. denied*, 442 U.S. 944 (hereafter "*Stelling*"); and *Alexander* v. *International Union of Operating Engineers*, 624 F.2d 1235 (C.A. 5) (hereafter "*Alexander*").

Indeed, the Court below, in its opinion in this case expressly declined to consider whether a union Constitution is a "contract" for purposes of § 301(a). Referring to the Seventh Circuit decision in *Sidell*, *supra*, the Court below said:

> The court decided that a § 301(a) contract might be expressed in a union constitution, a local union charter, or a combination of both. *Id.* at 1253. We need not reach this issue. [Pet. 11a, n. 13.]

In this respect, the Court below followed the lead of the District of Columbia Circuit in *1199 DC*, 533 F.2d 1205, 1207-1208. Of course, the failure of these courts to even consider what the statutory language means is precisely contrary to this Courts' instructions. See text and note at pp. 12-13, n. 7, *supra*.

The one appellate court which has categorically held that "* * * § 301(a) does not confer jurisdiction of a dispute between a parent union and a local union over the meaning of the parent's constitution" is the Tenth Circuit. *Smith* v. *United Mine Workers of America*, 493 F.2d 1241, 1243. In the Tenth Circuit's view, a national Constitution is not a "contract" within the meaning of § 301(a).[14] The Court said:

> We recognize that § 301(a) must be liberally applied to promote industrial peace, but that principle has no application here. This controversy relates only to the construction and application of the union constitution and has nothing to do with labor-

[14] The Court recognized that the International (United Mine Workers) and the locals are labor organizations, and that they represent employees in an industry affecting commerce. *Id.* at 1242.

> management relations. It may be that under the law of some states a union constitution is a contract between the union and its members. See International Association of Machinists v. Gonzales, 356 U.S. 617, 618-619, applying California law. We are concerned with federal, not state, law and we must view § 301 in the light of its underlying purpose to provide a federal remedy in cases where, because of difficulties in suing labor associations, other remedies were inadequate. See Lincoln Mills, *supra*, 353 U.S. at 453-454. [493 F.2d at 1243.]

Although it determined that the meaning of the word "contract" is a matter of federal law, the Court did not stop to consider whether national Constitutions were considered to be "contracts" under federal law at the time that § 301(a) was enacted. If the Court had done so, it would necessarily have concluded that federal law did treat national Constitutions as "contracts."

The Tenth Circuit actually drew from the absence of legislative history support for its conclusion that § 301(a) does not reach suits between national unions and their locals:

> If Congress intended to turn over to the federal courts the control and supervision of internal union affairs which have no external application to industrial peace or to collective bargaining agreements we believe that Congress would have said so explicitly. [493 F.2d at 1243-1244.]

But this line of argument from Congressional silence in the course of enacting a jurisdictional statute was expressly rejected in *Harrison* v. *PPG Industries, Inc.*, 446 U.S. 578, 591-592. This, then, "is a case for applying the canon of construction of the wag who said when the legislative history is doubtful, go to the statute." *Greenwood* v. *United States*, 350 U.S. 366, 374.[15]

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[15] To be sure, the legislative history of § 301 in its entirety, and indeed of the LMRA as a whole, is of relevance in interpreting the

B. The Policy Arguments Against Reading Section 301(a) As Written Are Unsound In Principle and On Their Face.

In *Smith, supra,* the Tenth Circuit said:

> A holding that the word "contracts" as used in § 301(a) encompasses union constitutions would open the doors of the federal courts to every dispute between a parent union and a local union over the meaning and effect of the union constitution. [493 F.2d at 1243.]

As a basis for declining jurisdiction which Congress granted, this argument is fundamentally unsound. As Chief Justice Marshall wrote:

> It is most true, that this court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction, if it should.
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> * * * *
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> We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. *Cohens* v. *Virginia,* 6 Wheat. (19 U.S.) 264, 403.

See also, *e.g., Harrison* v. *PPG Industries, Inc.,* 446 U.S. 578, 592-594.

And insofar as the Tenth Circuit's statement is intended as an argument for a narrow construction of

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particular portion of § 301(a) which is at issue here, and is therefore entitled to consideration. Thus, as we have shown, the history of § 301(b) and (e) sheds light on the Congressional understanding of "contracts". So too, the legislative history of § 301 illuminates the effect to be given to particular provisions by showing the purposes which Congress sought to achieve. More generally, it is proper to look at Congressional policies in other provisions of the Act insofar as they may bear on the meaning of a particular provision, although care must be taken against drawing inferences which would treat unconnected provisions of major legislation as if the statute were a single monolithic entity.

§ 301(a), it is wide of the mark for several reasons in addition to the most obvious and overriding objection that it is wholly without basis in the language of the statute or its legislative history.

(1) There is no basis for fearing that the business of the federal courts would be materially expanded by allowing suits between national unions and their locals for violation of the naitonal's Constitution. Even on a generous estimate there have been probably a total of less than fifty such suits throughout the federal system. For example, the Fourth Circuit has recognized such suits since *Parks* was decided in 1963 (see p. 14 *supra*) and if the reported decisions are any guide, there has been no influx of such suits in the district courts of that Circuit. So too, jurisdiction has been clear in the Second Circuit since *Sombrotto* was decided in 1971 (*id.*), but has apparently attracted only a handful of such cases in the courts of that relatively litigous jurisdiction. In all probability a decision sustaining the *Parks-Sombrotto* construction of § 301(a) would bring fewer cases into the federal courts than the holding in *Lion Dry Goods* that the term "contracts" is not limited to collective bargaining agreements. And it can be stated with positive assurance that the enlargement of federal jurisdiction would be miniscule when compared with that effectuated by the decision in *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, where, it will be recalled, the result was reached over weighty statutory and constitutional objections advanced in Justice Frankfurter's dissenting opinion, *id.* at 460-484.

(2) In contrast with the Tenth Circuit's view that a union Constitution is not a contract, the reluctance of the Courts of Appeals to read § 301(a) as permitting interference in internal union affairs is not wholly unjustified. For the legislative history of the LMRA evidences that the 1947 Congress consciously declined to enter into the substantive regulation of internal union affairs. It rejected

provisions in the House bill which would have closely regulated union affairs,[16] and enacted a proviso to § 8(b)(1)(A) protective of union rules.[17] Thus, as of 1947, Congress' policy had not yet moved to the point which it reached in 1959 when it enacted Titles I through VI of the Labor Management Reporting and Disclosure Act of 1959, 73 Stat. 519. But the fact that the 1947 Congress stopped short of regulating internal union affairs cannot bear the weight which the Court below and other Courts of Appeals have placed on that decision in their interpretation of § 301(a).

It is perhaps a sufficient refutation of their reading that their tests (however verbalized) require a heroic rewriting of the language of § 301(a). In any event, their construction of § 301(a) simply does not follow from their premise—which we grant—that the LMRA was not designed to regulate the internal affairs of labor organizations. For, the enforcement of contracts—here union Constitutoins adopted by the members themselves—is materially different from the imposition by government of substantive rules and regulations such as was accomplished in the LMRDA and had previously been undertaken by some states. The difference was understood in the very decision to enact § 301(a). Although §§ 8(a) and (b) of the LMRA (part of the amendments to the National Labor Relations Act) contain numerous significant regulations of the conduct of employers and unions, the enforcement of agreements between them was "left to the usual processes of the law"—that is, judicial enforcement under § 301(a). See *Dowd Box Co., supra*, 368 U.S. at 511, quoting p. 42 of

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[16] H.R. 3020 as passed by the House, § 8(c).

[17] "Provided, that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein * * *."

the Conference Report. Moreover, such agreements were determined to be enforceable, although a Congressional policy "of particular importance—if not the overriding one—was the policy of free collective bargaining." *Carbon Fuel, supra*, 444 U.S. at 218. See also *id.* at 219, quoting § 8(d) and cases cited *id.* Thus, Congress considered the judicial enforcement of contracts between employers and union to be entirely consistent with the right of these parties to make voluntary decisions as to the terms of these contracts. So too, judicial enforcement under § 301 (a) of union Constitutions—which Congress understood to be "contracts" (see pp. 15 to 18, *supra*)—is entirely consistent with the Congressional judgment that union members should remain free to decide what the provisions of their Constitution shall be.

In sum, the reasoning of the Tenth Circuit, which has wholly disallowed such suits, and that of the other Courts of Appeals which has also given a narrowing construction to the "suits between such labor organizations" clause is wholly inconsistent with this Court's decisions in *Lincoln Mills* and *Lion Dry Goods*, which gave hospitable scope to the jurisdictional grant of § 301(a) in recognition of the Congressional policy which strongly favors the enforcement of contracts by and against labor organizations.

II. EVEN IF A SIGNIFICANT IMPACT ON LABOR-MANAGEMENT RELATIONS IS NECESSARY TO SUSTAIN JURISDICTION IT IS PRESENT ON THIS RECORD.

If, contrary to our submission in Part I hereof, the existence of jurisdiction under § 301(a) does depend upon whether or not a controversy has a "significant impact on labor-management relations or industrial peace", as the Court below held (Pet. 18a), the Court still was in error in finding an absence of jurisdiction in this case.

For despite what the Court held and what Local 334 itself has only recently strained to deny, from the very beginning of this action that local has asserted that the consolidation would directly and substantially affect two matters which lie at the very core of "labor-management relations"—the referral of men to employment and the identity of the union party(ies) to negotiations and agreements with employers. Thus, having formulated a test for jurisdiction, the Court then failed to apply it properly to the circumstances of the case before it.

The existence of federal question jurisdiction under the "labor-management relations" standard appears on the face of plaintiff's complaint. See *Oneida Indian Nation* v. *County of Oneida*, 414 U.S. 661, 665. Both the complaint and amended complaint filed by Local 334 alleged that the consolidation would change the referral system that had been in existence for many years in Morris County, New Jersey. Whereas, prior to the consolidation, Local 334 "operate[d] a hiring hall" (J.A. 56) that made referrals of men to employment "from a unified list, regardless of whether the job requires a plumber or pipefitter and regardless of the membership designation of each such member" (J.A. 56), the Order of Consolidation divided the local "along craft lines" (J.A. 59) and instituted "separate referral lists" (J.A. 21, 59) for plumbers and pipefitters. Moreover, both the complaint and amended complaint alleged that the consolidation displaced Local 334 altogether as the union representing both classes of employees in collective bargaining and contractual relations with industry employers. See complaint, para. 12, J.A. 21; amended complaint, para. 9-11, 26-28, J.A. 56.

The Court of Appeals, in its review of the jurisdiction issue, regarded these effects of the consolidation as only as only "intraunion" in nature or of minimal impact on labor relations (Pet. 16a). The Court concluded that

a union's referral procedure is simply an "internal union device," over which the union alone has discretion (Pet. 16a). Any change in that procedure, the Court apparently assumed, could not affect labor relations. And while acknowledging that the consolidation would result in the termination of Local 334's own contractual relations with and obligations ot employers, the Court held that since the two successor locals (Locals 14 and 274) were to assume those obligations, any impact on labor relations would not be sufficient to warrant the exercise of federal jurisdiction (See. Pet. 16a).

We submit that these rulings are erroneous as a matter of law. A change in the method of referring men to employment (particularly one as extensive as that which was alleged in this case) is not simply an "internal union matter," as the Court below termed it. Such an exclusive referral procedure would not exist at all but for an employer-union agreement to that effect. See generally, *Teamsters Local* v. *Labor Board*, 365 U.S. 667. The Court there quoted Senator Taft's discussion of hiring halls during a debate on proposed amendments to the LMRA:

> In order to make clear the real intention of Congress, it should be clearly stated that the hiring hall is not necessarily illegal. The employer should be able to make a contract with the union as an employment agency. The union frequently is the best employment agency. The employer should be able to give notice of vacancies, and in the normal course of events to accept men sent to him by the hiring hall. He should not be able to bind himself, however, to reject non-union men if they apply to him; nor should he be able to contract to accept men on a rotary-hiring basis. [*Id.* at 673-674, quoting S. Rep. No. 1827, 71st Cong., 2d Sess. p. 13.]

So, too, in 1959 one of the reasons Congress enacted § 8(f) was "that the employer must be able to have

available a supply of skilled craftsmen ready for quick referral". (H.R. Rep. No. 741, 86th Cong., 1st Sess., p. 19 (1959) quoted in *NLRB* v. *Iron Workers*, 434 U.S. 335, 348. See also S. Rep. No. 187, 86th Cong., 1st Sess. (1959) p. 28.)[18] Thus, even where the decision as to which persons are to be referred is left to the union, the employer is obviously and directly affected; and any change in the existing referral procedure can impact upon the employer just as certainly and substantially as a breach of the referral provision of the collective bargaining agreement itself.

Similarly, an international union's order which results in the displacement by two new local unions of the one local which had been party to collective bargaining with area employers for several years cannot be lightly dismissed as an event of only "minimal" significance in labor-management relations. The Court of Appeals justified its characterization on the basis that, under the Order of Consolidation, the two successor locals were to assume Local 334's existing collective bargaining agreements. (Pet. 16a). However, the record discloses that within less than one year from the date when the Order was issued, the Local 334 agreement had been terminated and, in its place, the separate agreements of Locals 14 and 274 had become operative. (J.A. 142.) More fundamentally the holding in *John Wiley & Sons* v. *Livingston*, 376 U.S. 543 that the duty to arbitrate survives a corporate merger rested at least in part on the recognition that the transition from one corporate organization to another might otherwise result in industrial strife. *Id.* at 549. "The objectives of national labor policy, reflected in established principles of federal law, require that the rightful prerog-

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[18] Indeed, the Hearing Officers' Report, which was an exhibit to the complaint discloses that in bringing about that change to the separate plumber and pipefitter referral systems, the United Association was very much aware that its action could directly and favorably affect industry employers and the unions' ability to fulfill their manpower needs. (J.A. 37)

ative of owners independently to rearrange their businesses and even eliminate themselves as employers be balanced by some protection to the employees from a sudden change in the employment relationship." *Id.* The consolidation of locals at issues in the case *sub judice* is simply the union-side equivalent of the corporate merger, and its potential for effect on labor-management relations is no less great.

In holding the impact on labor-managements relations to be insufficient in this case, the decision below was directly at odds with the decisions and reasoning of two other Courts of Appeals, both of which have assumed such an impact to be a precondition to federal jurisdiction but found it present on the basis of facts very similar to those alleged by Local 334 in this case. In *Local 1219, supra,* the First Circuit sustained jurisdiction over an action under an international union constitution brought when an international chartered a new local union to represent certain employees but then failed to take the action necessary to permit the new local to refer the men to employment (493 F.2d at 94). As the Seventh Circuit observed in analyzing the *Local 1219* case, "There were no strikes or other overt breaches of industrial peace." *Sidell, supra,* 552 F.2d at 1254-1255. Nevertheless, finding that the dispute "directly concern[ed] the representation of workers in collective bargaining," the Court of Appeals for the First Circuit found no reason "to depart from the literal meaning of the statute" and upheld the exercise of jurisdiction. 493 F.2d at 96. The action which precipitated the suit in *Sidell, supra,* was an international union's order that a local affiliate with a certain district council. The only indication of an effect on labor relations was an allegation by the Local in its complaint that the order of affiliation would cause "harm and interference with its relationship and contracts with its employers." This allegation was deemed sufficient by the Seventh Circuit to invoke federal jurisdiction. As the Court explained, ". . . here we have an allegation affecting the local's

relationship with employers, rather than . . . mere intra-union organization change . . ." 552 F.2d at 1255.

In sum, the First and Seventh Circuits correctly recognize that there is a significant impact on labor-management relations in disputes which originate over union actions, like the Order of Consolidation in this case, which pertain to matters of internal union organization. The Third Circuit's contrary conclusion rests on an entirely unrealitsic view of labor-management relations. Thus it erred in holding that there was no federal jurisdiction here even if that court's legal standard (or some other requirement of labor-management effects) were to be read into the unqualified jurisdictional language of § 301(a).

CONCLUSION

For the foregoing reasons the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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